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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,515	06/30/2004	Raphael Ihringer	16924-2	4367
53450 7590 08/29/2008 KRIEG DEVAULT LLP ONE INDIANA SQUARE SUITE 2800 INDIANAPOLIS, IN 46204-2079				
EXAMINER				
CANTELMO, GREGG				
ART UNIT		PAPER NUMBER		
1795				
MAIL DATE		DELIVERY MODE		
08/29/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/500,515

Applicant(s)

IHRINGER ET AL.

Examiner

Gregg Cantelmo

Art Unit

1795

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 13 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. In response to the amendment received June 13, 2008:
 - a. Claims 25-56 are pending;
 - b. The substitute specification has not been entered;
 - c. The prior art rejections of record are overcome in light of the amendment.

Specification

2. The substitute specification filed June 13, 2008 has not been entered because it does not conform to 37 CFR 1.125(b) and (c) because: applicant's remarks fail to assert that no new matter has been entered.

Claim Objections

3. Claims 25-56 are objected to because of the following informalities: Claim 25 recites the term "distinc" in line 4, this should be "distinct". Appropriate correction is required.
4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 25-56 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the anode comprising three distinct layers of which are an anode active layer, anode support layer and anode collector layer, does not reasonably provide enablement for additional layers therein. The specification does not enable any person skilled in the art to which it pertains, or with which it is most

nearly connected, to make the invention commensurate in scope with these claims. By amendment, the claims now recite an anode having three distinct layers with "said anode comprising an active anode layer and an anode support layer". The claim thereafter recites that the anode comprises an anode collector layer. The scope of the claim now unduly encompasses an anode which could have more than three layers (active layer, support layer, other layer and collector layer) since it fails to clearly define that the collector layer of the claims is the third layer of the anode. A review of the specification shows that the three layer structure includes only the active layer, support layer and collector layer (see various figures - caa/csa/cca). Applicant is advised to amend the claims to recite that the "anode comprising three distinct continuous layers, each of these layers forming a single, continuous structure, said anode layers comprising an active anode layer, an anode support layer and an anode collector layer" and also to amend the phrase "said anode comprises an anode collector layer" to "said anode collector layer". To overcome this rejection.

Allowable Subject Matter

6. Pending clarification of the outstanding issues above, no clear statement regarding allowable subject matter can be presented at this point in prosecution. However Applicant is advised that if the proposed changes above, or reasonably identical changes are made to the claims, it would appear that none of the prior art of record are held to teach, suggest or render obvious the claimed SOFC PEN having an anode comprising three distinct layers having the structure and arrangement recited in claims 25.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregg Cantelmo whose telephone number is 571-272-1283. The examiner can normally be reached on Monday to Thursday, 8:30-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pat Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregg Cantelmo/
Primary Examiner, Art Unit 1795